

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH RINALDI

AFFIDAVIT OF MAILING

~~XXXXXX Under Article (x) 20 of the~~  
~~XXXXXX Tax Law for the Year (s) 1971.~~  
For a Hearing  
XXXXXX under Article (x) 20 of the  
Tax Law for the Year (s) 1971.

State of New York  
County of Albany

John Huhn, being duly sworn, deposes and says that  
he is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 22nd day of September, 1977, he served the within  
Notice of Decision by (certified) mail upon Joseph Rinaldi

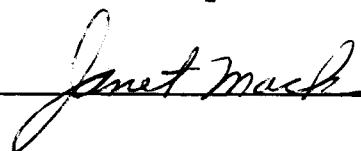
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. Joseph Rinaldi  
7117 12th Avenue  
Brooklyn, New York 11228

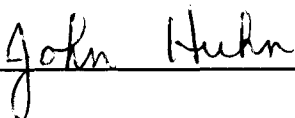
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the (representative of) petitioner herein and that the address set forth on said wrapper is the  
last known address of the (representative of) petitioner.

Sworn to before me this

22nd day of September, 1977.

  
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STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH RINALDI

AFFIDAVIT OF MAILING

~~Return of a Deficiency~~  
~~Notice of a Determination of a Refund~~  
For a Hearing  
under Article (x) 20 of the  
Tax Law for the Year (1971) 1971:

State of New York  
County of Albany

John Huhn, being duly sworn, deposes and says that  
he is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 22nd day of September, 1977, he served the within  
Notice of Decision by (certified) mail upon Louis M. Meringolo

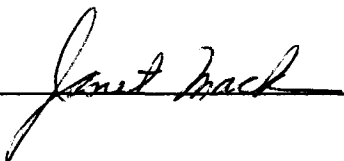
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Louis M. Meringolo, Esq.  
307 East 44th Street  
New York, New York 10017

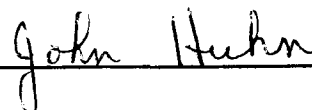
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the (representative  
of the) petitioner herein and that the address set forth on said wrapper is the  
last known address of the (representative of the) petitioner.

Sworn to before me this

22nd day of September, 1977.

  
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STATE OF NEW YORK  
STATE TAX COMMISSION  
TAX APPEALS BUREAU  
ALBANY, NEW YORK 12227

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

**September 22, 1977**

**Mr. Joseph Rinaldi**  
**7117 12th Avenue**  
**Brooklyn, New York 11228**

**Dear Mr. Rinaldi:**

Please take notice of the **DECISION**  
of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section **(x) 478** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

**John J. Sollecito**  
**Director**  
**Tax Appeals Bureau**

cc: Petitioner's Representative  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application	:	
of	:	
JOSEPH RINALDI	:	DECISION
for a Hearing under Article 20 of the Tax Law	:	
for the Year 1971.	:	

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Applicant, Joseph Rinaldi, 7117 12th Avenue, Brooklyn, New York 11228, filed an application for a hearing regarding the redetermination of a deficiency or the refund of cigarette tax under Article 20 of the Tax Law for the year 1971. (File No. 16409)

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on June 21, 1977 at 2:45 p.m. Applicant appeared by Louis M. Meringolo, Esq. The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether the assessment of applicant, Joseph Rinaldi, for alleged possession of unstamped cigarettes was correct under Article 20 of the Tax Law.

FINDINGS OF FACT

1. On August 21, 1970, investigators from the Special Investigations Bureau of the State Tax Commission arrested one Joseph Rinaldi and another at 901 Tompkins Avenue, Staten Island, New York, for possession of approximately 800 cartons of cigarettes which did not bear New York State tax stamps.

2. The arrest report described Joseph Rinaldi as residing at 7117 12th Avenue, Brooklyn, New York, aged 28 (d/o/b 6/7/42) 6' 1", 185 lbs., brown hair and blue eyes.

3. On July 21, 1971, the Miscellaneous Tax Bureau issued a Notice of Determination No. 1663 addressed to Mr. Joseph Rinaldi, 7117 12th Avenue, Brooklyn, New York, assessing him \$4,991.40 for cigarette taxes allegedly due under Article 20 of the Tax Law.

4. On June 5, 1972, the Department of Finance of the City of New York placed a garnishee on the bank account of Joseph E. Rinaldi at the Borough Park branch of the First National City Bank in Brooklyn, New York, naming him as judgment debtor.

5. On June 8, 1972, the Bureau of Compliance and Collection of the Department of Finance, City of New York, withdrew its levy on the bank account of Joseph Rinaldi.

6. Applicant, Joseph E. Rinaldi, is 67 years of age, about 5' 6" in height, 145 lbs. and has grey hair and brown eyes. His averral is uncontradicted that he was able to convince New York City Finance Department officials that he was not the Joseph Rinaldi against whom a warrant and judgment for sales tax had been obtained.

7. On June 25, 1976, the attorney for applicant, Joseph Rinaldi, wrote to the Miscellaneous Tax Bureau protesting a warrant and judgment against Rinaldi for cigarette tax in the amount of \$80,024.64.

8. On July 7, 1976, the Miscellaneous Tax Bureau advised the attorney for applicant, Joseph Rinaldi, that the assessment he was protesting was a New York City assessment based on New York State cigarette determination No. 1663 issued on July 27, 1971 in the amount of \$4,991.40. However, the applicant's attorney was told that a hearing would be held.

9. Applicant, Joseph Rinaldi, testified that he had lived at 7117 12th Avenue, Brooklyn, New York for the last 20 years. He stated that he had not received any Notice of Determination of taxes due under the Cigarette Tax Law. He averred that his son, Nicholas Joseph Rinaldi, d/o/b 6/7/42, had left home six or seven years prior to 1970. There is no evidence that applicant, Joseph Rinaldi, ever received Notice of Determination No. 1663. The whereabouts of his son, Nicholas Joseph Rinaldi, are unknown.

10. The applicant, Joseph Rinaldi, is not the person arrested by enforcement officers of the State Tax Commission and the person against whom Notice of Determination No. 1663 dated July 27, 1971 was issued by the Miscellaneous Tax Bureau.

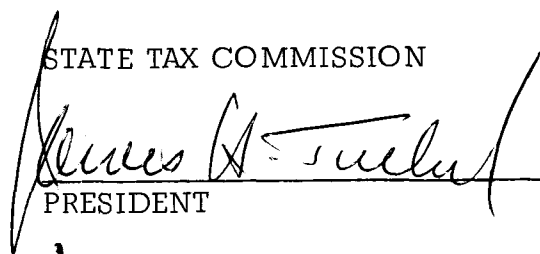
CONCLUSIONS OF LAW

A. That Assessment No. 1663 dated July 27, 1971 was made against the Joseph Rinaldi born June 7, 1942 who was arrested August 21, 1970, and not against the sexagenarian applicant, Joseph Rinaldi. As to the arrestee, the assessment may be correct and valid, but as to applicant, it is based on a mistake as to fact.

B. That the application of Joseph Rinaldi is granted and as to him, the Notice of Determination dated July 27, 1971 is cancelled.

DATED: Albany, New York  
September 22, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER